

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Raphael Mendez,

Plaintiff,

v.

**ORDER**

Civil No. 16-2644 ADM/BRT

Officer T. Dole, Lt. Sladek, Dr. Gabel,  
Unknown Unit Discipline Committee  
(UDC) Members, Unknown Discipline  
Hearing Officer (DHO) Members, Warden  
L. LaRiva, J. Petersen,

Defendants.

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Raphael Mendez, Pro se.

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Defendants Officer T. Dole, Lt. Sladek, Dr. Gabel, Unknown Unit Discipline Committee (UDC) Members, Unknown Discipline Hearing Officer (DHO) Members, and Warden L. LaRive have filed a Motion to Dismiss or Motion for Summary Judgment [Docket No. 23] (the “Motion”). This matter is before the undersigned United States District Judge for a ruling on Plaintiff Raphael Mendez’s (“Mendez”) two Objections [Docket Nos. 30, 31].

Mendez objects to the proposed order submitted with the Defendants’ Motion, as well as to the substance of the Motion itself. Mendez’s second objection is directed at the January 10, 2017 Order [Docket No. 21] requiring Mendez to provide Defendant Officer J. Petersen’s full name by February 8, 2017, to prevent having claims against that defendant be dismissed without prejudice for failure to prosecute.

The first objection is overruled. The local rules require the moving party to provide the judge and the non-moving party with a proposed order. See D. Minn. L.R. 7.1(c)(1)(B). The

proposed order merely reflects the outcome the moving party is seeking; it does not influence the Court's ruling or prejudice the non-moving party. Mendez's arguments challenging the Defendants' Motion will be treated as a memorandum in opposition, and will be considered along with the arguments Mendez briefed in his February 21, 2017 Letter [Docket No. 33].

Mendez's second objection [Docket No. 31] is also overruled. Mendez argues that because he is unable to obtain the full name of Defendant Officer J. Petersen through a Freedom of Information Act request before the February 8, 2017 deadline, the Court should order Defendant Warden LaRiva or a FMC Rochester attorney to supply the full name of Officer J. Petersen. As the plaintiff to this action, it is Mendez's responsibility to provide the information needed for the United States Marshal to effect service. See Lee v. Armontrout, 991 F.2d 487, 489 (8th Cir. 1993) (explaining that it is the responsibility of a prisoner proceeding pro se and in forma pauperis to provide the court and the U.S. Marshals with service information for the defendants). Significantly, the Order states that if Officer J. Petersen is dismissed at this stage for failure to prosecute and Mendez later learns Officer J. Petersen's full name, the complaint may be amended to reinstate those claims. This should alleviate Mendez's concerns about the timeliness of a Freedom of Information Act request.

Since the Order's February 8 deadline passed while this objection was pending, the deadline will be extended to March 30, 2017. If the full name of Officer J. Petersen is not provided at that time, that defendant will be dismissed without prejudice for failure to prosecute.

Based upon the foregoing, and all the files, records, and proceedings herein, **IT IS**  
**HEREBY ORDERED** that Plaintiff Raphael Mendez's Objections [Docket Nos. 30, 31] are  
**OVERRULED.**

BY THE COURT:

s/Ann D. Montgomery  
ANN D. MONTGOMERY  
U.S. DISTRICT JUDGE

Dated: March 16, 2017.